Supreme Court, U.S.
FILED

No. 09-1385 APR 28 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

TRICIA ROSSI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Second Circuit wrongly found that the district court had jurisdiction to enter a restitution order years after Ms. Rossi had completed serving her sentence and had completed her supervised release. This issue is similar to the issue presently pending before this Court in *Dolan v. United States* (09-367).

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Tricia Rossi, co-defendants Deyan Popovic, Mohammed Ardehali, Charles Steinke, and the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

Tricia Rossi respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit in *United States v. Rossi*, is at 592 F.3d 372 (2d Cir. 2010). (*see* Pet. App. 2).[1]

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on January 28, 2010 (Pet. App. 1, 2). This petition is timely filed within the 90-day statutory time limitation. This Court has jurisdiction to review the judgment below on a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

[1] Numbers in parentheses preceded by "Pet. App." refer to the Appendix to this Petition.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3663(f)

(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

(2) The end of such period or the last such installment shall not be made later than –

(A) the end of the period of probation, if probation is ordered;

(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

(C) five years after the date of sentencing in any other case.

18 U.S.C. § 3663(g)

[A]ny restitution ordered under this section shall be a condition of such probation or supervised release.

STATEMENT

A. Introduction

Tricia Rossi seeks a writ of certiorari from the decision of the United States Court of Appeals for the Second Circuit ("Second Circuit"), affirming the amended judgment of the United States District

Court for the Southern District of New York (Hon. Denise Cote), requiring Ms. Rossi to pay restitution, pursuant to 18 U.S.C. § 3663,[2] in the amount of $200,604.61 to three insurance companies. The Second Circuit rejected Ms. Rossi's argument that the district court lacked jurisdiction to enter its restitution order some six years after she had served her sentence and three years after she had completed her supervised release. The Second Circuit relied partially on its prior decision in *United States v. Zakhary*, 357 F.3d 186 (2d Cir. 2004), which held that 18 U.S.C. § 3664(d)(5), which permits, under certain circumstances, the imposition of restitution to be delayed for up to 90 days after sentencing, is not jurisdictional, and its violation will be deemed harmless absent actual prejudice. *Id.* at 191.

We respectfully submit that certiorari should be granted in light of this Court's pending decision in *Dolan v. United States* (09-367) which addresses the identical issue; to wit: whether a district court may enter a restitution order beyond the time limit prescribed in 18 U.S.C. § 3664(d)(5).

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[2] Because Ms. Rossi's conduct of conviction occurred between April 1994 and April 1996, restitution was imposed under the discretionary provisions of 18 U.S.C. § 3663 ("VWPA") rather than under the Mandatory Victims Restitution Act ("MVRA") 18 U.S.C. § 3663A.

B. Summary of Facts

1. Procedural History

Tricia Rossi was indicted and tried for several counts relating to false medical insurance filings, and sentenced, in 1999, to 42 months' imprisonment and restitution in the amount of $634,889, which was made a condition of her supervised release.

The Second Circuit, on direct appeal, affirmed Ms. Rossi's conviction, but vacated the restitution order because the district court had failed, as was required under 18 U.S.C. § 3664(a) (1995), to consider several mandatory factors before imposing restitution. *United States v. Popovic*, 216 F.3d 1074 (2d Cir. 2000).

On remand, the district court re-imposed its restitution order. However, the Second Circuit, in an opinion dated April 5, 2001, again vacated and remanded the restitution order for a new determination of the amount of loss suffered by the insurance companies as a result of the conspiracy. *United States v. Popovic*, 8 Fed. Appx. 22, 26, 2001 WL 345146, *3 (2d Cir. 2001).

On remand, the government and the defense had only sporadic contact. The district court never sought the parties' presence in court nor did it otherwise seek to hold a new restitution hearing. Meanwhile, Ms. Rossi was released from prison on November 15, 2002 and was released from supervised release three years later.

Beginning on September 22, 2004, the government proceeded to send the defense documentary support for its claim that three insurance companies – Aetna Insurance, Empire Blue Cross/Blue Shield, and Principal Financial Group – suffered losses totaling approximately $270,000 as a result of false insurance claims filed under the identification numbers of Dr. Mohammed Ardehali (215-74-4784) and Dr. Charles Steinke (371-50-7571). The aforementioned doctors worked for, or otherwise permitted their identification numbers to be used by DB Medical, a medical facility founded by alleged coconspirator and government witness Deyan Popovic in 1994.

For the next few years the government and defense had only sporadic contact and the government made no effort to place the case on the court's calendar. During this time the defense counsel took the position that the district court no longer had jurisdiction over Ms. Rossi, as she had long ago completed her term of imprisonment and period of supervised release. Defense counsel argued that, pursuant to 18 U.S.C. § 3663(g), if the defendant was placed on probation or supervised release "any restitution ordered under this section shall be a condition of such probation or supervised release" and a defendant who failed to meet her restitution requirements could face various penalties. Moreover, 18 U.S.C. § 3663(f) provides for a date by which all restitution payments would need to be completed which, as relevant here, was five years after the end of the defendant's term of

imprisonment. 18 U.S.C. § 3663(f) provides, in relevant part, as follows:

> (f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.
>
> (2) The end of such period or the last such installment shall not be made later than –
>
> (A) the end of the period of probation, if probation is ordered;
>
> (B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and
>
> (C) five years after the date of sentencing in any other case.

Correspondence with the district court ensued, but the case was reassigned, on October 15, 2008, from Judge Owen to Judge Cote. Until that time, the only docket entry in Ms. Rossi's case, excluding the May 7, 2001 issuance of the mandate by the Second Circuit, was Ms. Rossi's payment of her "fine" in the amount of $524.00, received on March 20, 2003.

The parties appeared before Judge Cote on October 23, 2008. At that time the district court expressed the view that there was no jurisdictional impediment to re-imposing restitution absent actual prejudice, and suggested the issue was analogous to that addressed in *Zakhary*, *supra*, 357 F.3d 186. Following

an evidentiary hearing on December 11, 2008, the district court ordered restitution totaling $200,604.61.

2. Second Circuit's Decision

Ms. Rossi argued on appeal that the district court lacked jurisdiction under the VWPA to enter an order of restitution because (1) Ms. Rossi had, by the end of 2005, finished serving her sentence and supervised release period and was therefore a private citizen no longer subject to the court's jurisdiction and (2) although the district court found that it had jurisdiction because the Second Circuit remanded the case in 2002 for a new restitution hearing, that remand order neither purported to, nor did it in fact, create jurisdiction of timeless longevity in the district court to enter such an order.[3]

Ms. Rossi further argued that *Zakhary*, relied on in part by the district court, did not address the question of whether restitution could be imposed after the period has lapsed during which the defendant's obligation to make restitution payments may be enforced by the district court or an existing restitution award may be modified. Nor did it address whether restitution may be imposed after the defendant has fully

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[3] Ms. Rossi also argued on appeal that the government failed to support its request for restitution by a preponderance of the evidence. We do not seek to raise that issue if a writ of certiorari is granted.

served her sentence of imprisonment and period of supervised release.

The Second Circuit rejected these arguments, finding that (1) the VWPA provisions indicating that the district court must impose restitution at the time of sentence applied to both the original sentencing and the remands for resentencing ordered by the Second Circuit; and (2) because the district court's restitution order did not specify any time period during which Ms. Rossi was to make payment, the provisions of § 3663(f) requiring payment within five years was inapplicable. *Rossi, supra*, 592 F.3d at 374-75. Regarding *Zakhary*, the court stated:

> [I]n construing a timing limitation on sentencing under the MVRA, we have indicated that a defendant might be entitled to invoke that time limitation if she could make "a clear showing that [her] substantial rights ha[d] been prejudiced by [the] delay." *United States v. Zakhary*, 357 F.3d 186, 192 (2d Cir.2004). Even if we were to extend that analysis of the MVRA and apply it to a matter arising under the VWPA, Rossi has not shown that she was prejudiced by the lapse of time. If anything, the delay has served to benefit her, due to the loss of proof as to the initial amount of damage suffered by the victim companies.

Id. at 375.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT MS. ROSSI'S PETITION FOR A WRIT OF CERTIORARI, IN LIGHT OF ITS PENDING DECISION IN *DOLAN*, TO DETERMINE WHETHER A DISTRICT COURT RETAINS JURISDICTION TO IMPOSE RESTITUTION YEARS AFTER THE DEFENDANT HAS SERVED HER SENTENCE AND PERIOD OF SUPERVISED RELEASE

In this case, the district court imposed restitution some seven-and-one-half years after the second remand from the Second Circuit, and several years after Ms. Rossi had served her terms of imprisonment and supervised release. The Second Circuit found that the time limit provisions under 18 U.S.C. § 3663, requiring restitution to be imposed contemporaneously with the imposition of sentence, did not apply to Ms. Rossi's restitution.

The Second Circuit also found that if Ms. Rossi could invoke the time limitation under the MVRA, a different result would not be mandated because, the court found, Ms. Rossi was not prejudiced. The court relied, for this finding, on its decision in *Zakhary*, which held that 18 U.S.C. § 3664(d)(5), the statute under consideration by this Court in *Dolan*, which permits, under certain circumstances, the imposition of restitution to be delayed for up to 90 days after sentencing, is not jurisdictional, and its violation will therefore be deemed harmless absent actual prejudice. 357 F.3d at 191.

Zakhary, however, did not address the question of whether restitution may properly be imposed after the period has lapsed during which the defendant's obligation to make restitution payments may be enforced by the district court or an existing restitution award may be modified. Nor did it address whether restitution may be imposed after the defendant has fully served her sentence of imprisonment and period of supervised release.

We respectfully submit that the district court lacked jurisdiction to enter its restitution order because Ms. Rossi had, by the end of 2005, finished serving her sentence and supervised release period. She was, therefore, a private citizen no longer subject to the district court's jurisdiction. Nor did the Second Circuit remand of the case in 2002 for a new restitution hearing confer on the district court timeless jurisdiction to enter such an order. By the end of 2005, when Ms. Rossi was returned to the status of private citizen, the district court no longer had jurisdiction to enter another restitution order.

In light of this Court's pending decision in *Dolan*, which will address whether a district court may enter a restitution order beyond the time limit prescribed in 18 U.S.C. § 3664(d)(5) and, as such, likely have implications for the issues presented in Ms. Rossi's case, we respectfully request that the Court grant Ms. Rossi certiorari, or at least stay its decision regarding the grant of certiorari pending its decision in *Dolan*.

CONCLUSION

For the foregoing reasons, this Court should grant Ms. Rossi's petition for a writ of certiorari or stay that determination until the Court renders its decision in *Dolan v. United States* (09-367).

Respectfully submitted,

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08-6108-cr
United States v. Rossi

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2009

(Argued: November 18, 2009 Decided: January 28, 2010)

Docket No. 08-6108-cr

UNITED STATES OF AMERICA,

Appellee,

v.

TRICIA ROSSI,

Defendant-Appellant.

Before: KEARSE, CABRANES, and STRAUB, *Circuit Judges*.

Defendant-appellant Tricia Rossi appeals from an amended judgment entered on December 12, 2008 in the United States District Court for the Southern District of New York (Denise Cote, *Judge*) incorporating an amended restitution order of $200,604.61, after an earlier restitution order by Judge Richard Owen was twice vacated and remanded between 2000 and 2001. Rossi contends that because she had already completed her assigned 42 months' imprisonment and three years' supervised release by the time Judge Cote entered the new restitution order, the District Court no longer had jurisdiction to do so. We agree with Judge Cote that the District Court still had jurisdiction to reimpose restitution in 2008 based on our remand to the District Court in 2001. We hold

that the provisions of the governing statute in this case, the Victim and Witness Protection Act of 1982, were complied with because, *inter alia*, the restitution order was imposed at the time that Rossi was resentenced following our remand, and that Rossi has not shown that she was prejudiced by the lapse of time preceding resentencing. The judgment of the District Court is therefore affirmed.

JESSE M. FURMAN, Assistant United States Attorney (Rebecca A. Rohr, Assistant United States Attorney, *of counsel*) Lev L. Dassin, Acting United States Attorney, Office of the United States Attorney for the Southern District of New York, New York, NY, *for Appellee.*

RICHARD WARE LEVITT, Levitt & Kaizer, New York, NY, *for Appellant.*

PER CURIAM:

The question presented is whether, under the Victim and Witness Protection Act of 1982 ("VWPA"), 18 U.S.C. § 3663 (1995), the District Court had authority to enter an amended order of restitution when a defendant has already completed the terms of imprisonment and supervised release imposed.

Defendant-appellant Tricia Rossi ("Rossi" or "defendant") was convicted after a jury trial before Judge Richard Owen in the United States District Court for the Southern District of New York of one count of conspiracy to defraud health insurance

companies, in violation of 18 U.S.C. § 371, and twenty-one counts of substantive mail and wire fraud in connection with the health insurance scheme, in violation of 18 U.S.C. §§ 1341 and 1343. On September 17, 1999 Rossi was sentenced to 42 months' imprisonment, to be followed by three years' supervised release, and was ordered to pay restitution in the amount of $634,889. On June 27, 2000, we affirmed defendant's conviction but, with the consent of the government and based on its concession that the record of the sentencing hearing did not adequately reflect whether Judge Owen had considered several mandatory factors before imposing the order of restitution, we vacated the restitution order. *See United States v. Popovic,* No. 99-1566, 2000 WL 839975, at *6 (2d Cir. June 27, 2000) ("*Popovic I*"). On remand, after confirming that he had considered the relevant mandatory factors, Judge Owen on September 29, 2000 reimposed restitution in the amount of $634,889, to be paid at a rate of 10% of Rossi's gross monthly income during the period of her supervised release. On April 5, 2001, we again vacated the restitution order and remanded solely for the purpose of allowing defendant to contest the restitution amount and inspect the documentation used to calculate the loss amount. *See United States v. Popovic,* 8 F. App'x 22 (2d Cir. 2001) ("*Popovic II*").

As it happened, due to the passage of time, the government no longer possessed the relevant supporting documents. Accordingly, the government sought and obtained records of losses incurred by

some of the defrauded insurance companies. Rossi completed her term of imprisonment on November 15, 2002, and she completed her term of supervised release three years later. Between 2004 and 2008, defense counsel and the government "had occasional discussions about resolving the [restitution] matter but were unable to reach agreement." Appellee's Br. 12.

In September 2008, the government wrote to Judge Owen to request a conference regarding the reimposition of restitution. Defense counsel objected on the ground that Rossi, having completed her terms of imprisonment and supervised release, was no longer under the "jurisdiction" of the District Court. In October 2008, the case was transferred from Judge Owen to Judge Cote, who scheduled a conference for October 23, 2008. Judge Cote determined that she had the authority to reimpose restitution because the Court of Appeals had "remanded the sentence of the defendant for a determination of the amount of restitution." App. 36 (Hr'g Tr. Dec. 11, 2008). After hearing witnesses and arguments from both sides, Judge Cote "reimpose[d] the sentence that [had] been imposed upon [the defendant] except [amended] the amount of restitution," concluding that the government had proven losses attributable to Rossi's offenses totaling $200,604.61. *Id.* at 139. Rossi appeals from that amended judgment.

DISCUSSION

On appeal, Rossi argues that (1) the District Court lacked authority to enter an order of restitution because she had completed serving her terms of imprisonment and supervised release, and (2) the government failed to support its request for restitution by a preponderance of the evidence.

A. Jurisdiction Under the Victim and Witness Protection Act of 1982

We first note that it is undisputed that the District Court had jurisdiction and the authority to enter an order of restitution after this Court remanded the cause to the District Court in 2001. The question is thus whether at some point between this Court's remand in 2001 and the entry of the modified restitution order in 2008, the District Court was divested of its authority.

The issue of restitution in this case is governed by the VWPA. Although Rossi's conviction occurred after the enactment of the Mandatory Victims Restitution Act of 1996 ("MVRA"), Pub. L. No. 104-132, tit. 2(a)(ii), § 205, 110 Stat. 1214, 1229-32, her conduct predated the MVRA and, therefore, the parties have proceeded throughout this litigation with an understanding that the 1995 provisions of the VWPA apply to the present case. Rossi contends that the District Court lacked jurisdiction to enter an order of restitution in 2008, based on two VWPA provisions. First, she argues that although the

present restitution order was entered after she had "finished serving her sentence and supervised release period," Appellant's Br. at 15, the VWPA "requir[ed] that restitution be imposed at the time of sentence," *id.* at 16. It is true that the VWPA permits a district court to impose restitution "when sentencing a defendant," 18 U.S.C. § 3663(a)(1) (1995). However, we interpret this provision to apply both to a district court's original sentencing of a defendant and to a resentencing ordered by the court of appeals. Any suggestion that the provision applies only to the district court's original sentencing ignores our system of appellate review. *See generally* 18 U.S.C. § 3742(f)(1) (1995) ("If the court of appeals determines that the sentence was imposed in violation of law . . . , the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate. . . ."); *id.* § 3742(g) (2006) ("A district court to which a case is remanded pursuant to subsection (f)(1) . . . shall resentence [the] defendant in accordance with . . . such instructions as may have been given by the court of appeals. . . ."). Here, the restitution aspects of Rossi's original and amended sentences were vacated by *Popovic I* and *Popovic II,* respectively, and her case was remanded for resentencing. These remands returned jurisdiction over the case to the District Court. It was on remand that the District Court imposed the new restitution provisions as part of Rossi's resentencing. We therefore see no violation of the "when sentencing" provision of § 3663(a)(1).

Second, Rossi argues that the District Court had no authority to enter a restitution order in 2008, contending that the VWPA provides that the court cannot order that restitution be paid "later than . . . five years after the end of the term of imprisonment imposed." 18 U.S.C. § 3663(f)(2)(B) (1995). We reject this argument because it relies on a subsection of § 3663(f)[1] that is inapplicable to the order entered by Judge Cote. A reading of § 3663(f) as a whole makes clear that the five-year limitation imposed in subsection (f)(2) applies only to restitution orders that either specify a period during which payment is to be made or provide an installment plan pursuant to which payments are to be made. Subsection (f)(3) provides that if there is neither a specified period nor

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[1] That section provided as follows:

> (1) The court may require that [a defendant convicted of an offense specified in § 3663(a)(1)] make restitution under this section *within a specified period or in specified installments.*
>
> (2) The end of *such period or the last such installment shall not be later than* –
>
> > (A) the end of the period of probation, if probation is ordered;
> >
> > (B) *five years after the end of the term of imprisonment imposed,* if the court does not order probation; and
> >
> > (C) five years after the date of sentencing in any other case.
>
> (3) *If not otherwise provided by the court under this subsection, restitution shall be made immediately.*

18 U.S.C. § 3663(f) (emphases added).

an installment plan, restitution is to be made immediately; although subsection (f)(3) requires a defendant to make restitution immediately after it is imposed, it includes no time limitation upon when a court may impose that restitution order.

The restitution order at issue on this appeal was imposed by Judge Cote without specification of any period during which Rossi is to make payment and without any provision for Rossi to make payments in installments. Accordingly, the present restitution order is governed by subsection (f)(3). Subsection (f)(2) is simply not applicable. We therefore reject Rossi's contention that the restitution order imposed in 2008 was foreclosed simply by the passage of time between our second remand and Rossi's resentencing.

Finally, we note that in construing a timing limitation on sentencing under the MVRA, we have indicated that a defendant might be entitled to invoke that time limitation if she could make "a clear showing that [her] substantial rights ha[d] been prejudiced by [the] delay." *United States v. Zakhary*, 357 F.3d 186, 192 (2d Cir. 2004). Even if we were to extend that analysis of the MVRA and apply it to a matter arising under the VWPA, Rossi has not shown that she was prejudiced by the lapse of time. If anything, the delay has served to benefit her, due to the loss of proof as to the initial amount of damage suffered by the victim companies.

Accordingly, we hold that (1) the District Court properly ruled that the passage of time did not divest

it of jurisdiction to order restitution following this Court's remand for resentencing, and (2) the District Court correctly entered an order of restitution.

B. Amount of Restitution Ordered by the District Court

Rossi argues also that the District Court erred in determining the amount of restitution imposed. We review restitution orders for "abuse of discretion," *see, e.g., United States v. Kinlock,* 174 F.3d 297, 299 (2d Cir. 1999); *cf. Sims v. Blot,* 534 F.3d 117, 132 (2d Cir. 2008) ("A district court has abused its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or rendered a decision that cannot be located within the range of permissible decisions." (internal quotation marks, citations, and alterations omitted)), and factual findings underlying a restitution order for clear error, *see, e.g., In re Rendón Galvis,* 564 F.3d 170, 174-75 (2d Cir. 2009). Our review of all VWPA cases, such as this one, is "extremely deferential," *United States v. Giwah,* 84 F.3d 109, 114 (2d Cir. 1996), because ordering restitution "requires a delicate balancing of diverse, sometimes incomparable[,] factors, some of which not only lack certainty but may indeed be based on mere probabilities, expectations, guesswork, even a 'hunch,'" *United States v. Atkinson,* 788 F.2d 900, 902 (2d Cir. 1986). The sentencing court is in the best position to engage in such balancing and therefore "it makes little sense for an appellate court, significantly more removed from the case than the

district court, to scrutinize the decision closely." *United States v. Porter*, 90 F.3d 64, 68 (2d Cir. 1996).

In ordering restitution, Judge Cote was cautious and restrained, noting, with respect to one of the claimed losses, that even though she thought it was "extraordinarily likely that most of this was a loss attributed to the [defendant's] conspiracy," she would not attribute that loss to defendant. App. 139 (Hr'g Tr. Dec. 11, 2008). Judge Cote explained, "I'd be speculating and choosing numbers and I'm not going to do that." *Id.* We have reviewed the record and are satisfied that the government produced sufficient evidence to support Judge Cote's restitution order. We cannot conclude that the District Court erred, much less "abused its discretion," in imposing the restitution amount that it did.

We have considered each of Rossi's arguments on this appeal and find them to be without merit.

CONCLUSION

We hold that the provisions of the VWPA were complied with in this case because, *inter alia*, the restitution order was imposed at the time that Rossi was resentenced following our remand, and Rossi has not shown that she was prejudiced by the lapse of time between our last remand and Rossi's resentencing.

Accordingly, the December 12, 2008 order of the District Court is AFFIRMED.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of January, two thousand and ten.

PRESENT: Amalya L. Kearse,
José A. Cabranes,
Chester J. Straub,
Circuit Judges.

United States of America,

Appellee,

v.

Tricia Rossi,

Defendant-Appellant.

JUDGMENT
Docket Number:
08-6108-cr

(Filed Jan. 28, 2010)

The appeal in the above-captioned case from an amended judgment of United States District Court for the Southern District of New York, having been argued on the district court record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the judgment of the District Court is

AFFIRMED in accordance with the opinion of this Court.

FOR THE COURT,
Catherine O'Hagan Wolfe,
Clerk

[SEAL]

/s/ Catherine O'Hagan Wolfe

Judy Pisnanont
Motions Staff Attorney

A True Copy
Catherine O'Hagan Wolfe,
Clerk
United States Court of Appeals,
Second Circuit

[SEAL]

/s/ Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT

SOUTHERN District of NEW YORK

UNITED STATES OF AMERICA	**AMENDED JUDGMENT IN A CRIMINAL CASE**
V.	Case Number: S1 1:97CR01109-002(DLC)
TRICIA ROSSI	USM Number: 41070-054
	Richard Levitt Defendant's Attorney

Date of Original Judgment: September 22, 1999
(Or Date of Last Amended Judgment)

Reason for Amendment:

☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))

☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))

☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))

☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(c))

☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))

☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))

☐ Direct Motion to District Court Pursuant
☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)

X Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

X was found guilty on count(s) 1-22 _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 371	Conspiracy to Commit Mail Fraud	04/01/1996	1
18 USC § 1341	Mail Fraud	12/29/1995	2-13
18 USC § 1343	Wire Fraud	11/25/1995	3-22

The defendant is sentenced as provided in pages 2 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address

until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 11, 2008
Date of Imposition of Judgment

/s/ Denise Cote
Signature of Judge

Denise Cote, U.S. District Judge
Name and Title of Judge

December 12, 2008
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

42 months on each of counts 1-22, to run concurrently with each other.

X The court makes the following recommendations to the Bureau of Prisons:

That the prison term be served at Danbury, if possible.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

X before 2 p.m. on 11/1/1999.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ a _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY: _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 YEARS.

Defendant shall pay restitution in the amount of $200,604.61 to the victims described on page 4.*

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law

enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 2,200.00	$ 0	$ 200,604.61*

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Aetna	101,546.29	101,546.29	
Empire Blue Cross Blue Shield	73,824.59	73,824.59	
Principle Life Insurance	25,233.73	25,233.73	
TOTALS	$ 200,604.61	$ 200,604.61	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

  ☐ the interest requirement is waived for the ☐ fine ☐ restitution.

  ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.